



# HOUSE OF REPRESENTATIVES

HB 2388

qualified disability expenses; eligible individuals  
Prime Sponsor: Representative Allen J, et al., LD 15

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**DPA** Committee on Children & Family Affairs

**X** Committee on Appropriations

Caucus and COW

House Engrossed

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## **OVERVIEW**

HB 2388 establishes the Achieving a Better Life Experience (ABLE) Program within the Department of Economic Security (DES), to be administered and managed by a financial institution chosen by DES. Establishes the seven-member Achieving a Better Life Experience Act Oversight Committee (Committee) to assist in the implementation, regulation and oversight of the ABLE program (program).

## **PROVISIONS**

### ***The Achieving a Better Life Experience Program***

1. Requires DES to:
  - a. Develop and implement the program by adopting rules, guidelines, and procedures in consultation with the Committee.
  - b. Retain professional services, including: accountants, auditors, consultants and other experts.
  - c. Seek rulings and guidance relating to the program from the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS).
  - d. Make changes to the program, as necessary, to comply with United States Code regarding qualified ABLE programs.
  - e. Notify the chairpersons of the Senate Health and Human Services Committee and the House Children and Family Affairs Committee of any changes to the federal program that would require rule or statute changes.
  - f. Receive proposals and consult with the Committee to select and contract with a financial institution or institutions to act as the depository of the ABLE program fund (fund) and manager of the program and ensure that the financial institution is in the best interest of the designated beneficiaries and demonstrates the most advantageous combination of:
    - i. Financial stability and integrity.
    - ii. Investment safety.
    - iii. Record keeping and reporting requirements.
    - iv. Plan for promoting the program.
    - v. Fees, if any, charged to eligible individuals for maintaining accounts.
    - vi. The minimum initial deposit required by the financial institution for the investment of fund monies and the willingness of the financial institution to accept contributions through payroll deduction plans and other deposit plans.

- vii. Any other benefits to the state or its residents, including an account opening fee payable to the account by the designated beneficiary and an additional fee from the financial institution for statewide program marketing by DES.
  - g. Negotiate a fee with the financial institution or institutions.
  - h. Maintain the program on behalf of the state.
  - i. Develop requirements for disbursement from qualified disability expense accounts in consultation with the Committee.
  - j. Provide for separate accounting for each designated beneficiary of the designated beneficiaries account.
  - k. Develop procedures for educating account owners about nonqualified expenses, if any such expenses were made by the account, and work with the financial institution to ensure that such nonqualified expenses are not approved in the future.
  - l. Develop and provide educational materials on the program, qualified disability expenses and requirements for being a designated beneficiary.
  - m. Submit an annual report for the first five years of the program to the Speaker of the House of Representatives, the President of the Senate and the Governor, which must include:
    - i. The number of accounts.
    - ii. The number of designated beneficiaries.
    - iii. A description of the types of disabilities the designated beneficiaries have.
    - iv. A summary of the qualified disability expenses that disbursements from the accounts are being used for.
  - n. Submit the first annual report on or before December 31, 2017, and the final four reports on or before December 31 of each year.
2. Appropriates \$240,000 from the state general fund to DES in fiscal year 2016-17 to implement and administer the program and exempts the appropriation from lapsing.
  3. Allows persons to submit applications for enrollment into the program and establish accounts in the fund at the financial institution.
  4. Excludes DES from procurement when contracting with the financial institution to act as depository of the fund and manager of the program.
  5. Requires the financial institution to receive all fund monies from account owners and deposit them into the fund.
  6. Requires that proposals submitted by financial institutions to DES must detail the financial instruments that will be held in accounts.
  7. Requires the contract entered into by DES and the financial institution to be between three to seven years in length and to provide the terms and conditions of the interests sold, the investment of monies and management of the fund.
  8. Requires the financial institution or financial institutions to:
    - a. Take all action to ensure that the program is in compliance with statute and federal code.
    - b. Keep adequate records of each of the funds accounts, keep each account and any subsequent records or accounting separate from one another, and provide DES with the information necessary to send electronic distribution statements and other notices to the Commissioner of Social Security as required by federal code.
    - c. Allow access of the program manager's books to representatives of DES and other state agencies in order to ensure compliance with the contract.

- d. Hold all operating monies in the fund in the name of and for the benefit of the fund and the state.
9. Allows DES to terminate a contract with a financial institution at any time for good cause on the recommendation of the committee.
10. Requires DES to take custody of accounts held at a financial institution if the contract is terminated and seek to promptly transfer the accounts to another financial institution and into investment instruments as similar to the original investments as possible.
11. Stipulates that if an eligible individual is a minor or an incapacitated adult, the account may be opened and managed by:
  - a. An agent under power of attorney signed by the eligible individual at a time when they had capacity to execute the power.
  - b. A parent of a minor child.
  - c. A court-appointed conservator of the estate.
  - d. A court-appointed guardian with express authorization.
12. Allows a court to waive any requirements of further accounting or inclusion in any bond in a case where the conservator or guardian of an eligible individual opened and manages the account.
13. Requires that a designated beneficiary may have only one account and must direct the investment of any contributions or earnings no more than two times a year.
14. Stipulates that contributions to accounts must be made in cash and that any excess contributions be promptly withdrawn in a nonqualified withdrawal or rolled over into another account.
15. Prohibits contributions and earnings on a designated beneficiaries account from being counted as income or resources for the purposes of eligibility for any welfare programs or the Arizona Health Care Cost Containment System (AHCCCS).
16. Allows the state to file a claim for payment of all remaining amounts in the account, subject to any outstanding payments due for qualified disability expenses, which is not to be in excess of the amount equal to the total medical assistance paid for the designated beneficiary.
17. Stipulates that accounts may be opened by filling out an application form provided by DES.
18. Prohibits a designated beneficiary from using an interest in an account as security for a loan.
19. Requires the financial institution to provide yearly statements to the designated beneficiary summarizing contributions made within the last year, total contributions made through the end of the period, the total amount in the account, distributions made during this period and any other matters that DES requires to be reported.
20. Provides that statements and information returns must be prepared and filed as required by statute and federal code.
21. Prohibits DES from sharing any social security numbers, addresses, or telephone numbers of designated beneficiaries.
22. Clarifies that this article does not:
  - a. Give any designated beneficiary rights or legal interests in an account, unless they are the account owner.

- b. Guarantee an eligible individual will receive services from a state agency or department related to the eligible individual's disability.
  - c. Guarantee that the amounts deposited or earned in an eligible individual's account will be sufficient to cover any qualified disability expense.
  - d. Establish any obligation by the state or any state agency to guarantee the benefit of any eligible individual to: the return on amounts contributed, the rate of interest or other return, or the payment of interest or other return on any account.
23. Stipulates that every contract, application, deposit slip or other document used in connection with an account must clearly state that the account is not insured by this state and that neither the deposited nor the investment return is guaranteed by the state.
24. Excludes DES from rulemaking requirements for the first year of this program.
25. Stipulates that DES must provide a 30-day public comment period when drafting the rules and hold at least one public hearing before adoption.
26. Strikes the amount of any deduction that is claimed in computing federal adjusted gross income for health insurance premiums or contributions to a health savings account from being added to Arizona gross income.
27. Stipulates that the amount of a withdrawal that is a qualified disability expense in the ABLE program shall not be added in calculation the Arizona gross income.
28. Clarifies that any amount of qualified disability expenses that are distributed from a qualified program must be subtracted in computing Arizona adjusted gross income.
29. Terminates the program on July 1, 2026.
30. Defines *ABLE*, *account*, *committee*, *department*, *designated beneficiary*, *eligible individual*, *financial institution*, *fund*, *program*, and *qualified disability expenses*.

***The Achieving a Better Life Experience Act Oversight Committee***

31. Establishes the seven-member ABLE Act Oversight Committee (Committee) within DES, comprised of:
- a. The Director of DES (Director) or the Director's designee.
  - b. The State Treasurer or the State Treasurer's designee.
  - c. One member who has knowledge, skill, or experience in investment, asset management or financial related experience.
  - d. One member who is a state attorney who has knowledge, skill, or experience in special needs trusts and disability issues.
  - e. One member who is an eligible individual.
  - f. One member who is a family member of an eligible individual.
  - g. One representative of a community-based organization that supports or advocates for individuals with disabilities.
32. Enables the governor to appoint every committee member other than the Director, State Treasurer or their designees.
33. Specifies that the Committee must appoint a chairperson from among their membership and meet once per calendar quarter.
34. Allows committee members to receive compensation not to exceed \$30 per each day in the service of the Committee.

35. Requires the Committee to:
  - a. Make recommendations and provide guidance for the establishment, implementation and improvement of the program.
  - b. Make recommendations regarding the selection of one or more financial institutions to act as depositories and managers of the accounts.
  - c. Review regulations adopted by the United States Secretary of the Treasury and identify changes necessary for the compliance.
  - d. Provide advice regarding requirements for disbursements from accounts for qualified disability expenses.
  - e. Monitor the use and effectiveness of the program, including: the number of accounts, the number of designated beneficiaries, a description of the types of disabilities which the designated beneficiaries have and the types of expenses for which disbursements have been made.
36. Exempts committee members from personal liability with respect to all action that are taken in good faith and within the scope of Committee actions.
37. Restricts committee membership to four year terms and prohibits committee members from serving more than two terms.
38. Specifies that three committee members serve terms ending January 31, 2018 and that two committee members serve terms ending January 31, 2020, with no limitations placed on the terms of the Director, State Treasurer, or their designees.
39. Directs DES to consult with the Committee to establish rules necessary to implement the program on or before July 1, 2017.
40. Terminates the Committee on July 1, 2024.
41. Makes technical and conforming changes.

**AMENDMENT OF THE CHILDREN & FAMILY AFFAIRS COMMITTEE**

Makes additions and subtractions to Arizona gross income, as related to this bill, retroactive to the taxable year beginning from and after December 31<sup>st</sup>, 2015. The amendment also makes technical changes.

**CURRENT LAW**

The federal Achieving a Better Life Act of 2014 (ABLE Act) was enacted on December 19, 2014 as part of the Tax Increase Prevention Act of 2014 (Public Law 113-295). The ABLE Act amends the Internal Revenue Code to exempt a qualified ABLE program from taxation. A *qualified ABLE program* is defined as “a program established by a state, or agency or instrumentality thereof under which a person may make contributions for a taxable year, for the benefit of an individual...to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account” (Public Law 113-295).

**ADDITIONAL INFORMATION**

As of April, 2015, 14 states have passed the ABLE Act or a Study Committee.